

Script #6 - Module: Enforcement of Open Burning

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Slide 3- Enforcement of Open Burning

This module will outline the process in which open burning violations are enforced at the state and local levels. The module will review the applicable laws and the permitting process, and then go over the process for enforcement of open burning when state law or local ordinances are violated.

This module will cover the following:

- Open Burning Defined and An Overview of the Open Burning Laws in Connecticut.
- State and Municipal Responsibilities, explaining where the authority of the State and local governments differentiate.
- When Open Burning is authorized.
- When Open Burning is not authorized. Enforcement of open burning laws in Connecticut as outlined under municipal and State authorities.
- Municipal enforcement process and the autonomy the local municipalities have to create their own procedures and ordinances to enforce open burning.
- Enforcement Penalties under local or State law when unauthorized open burning takes place.
- Enforcement Difficulties local open burning officials encounter while carrying out their duties.
- State enforcement response, and
- Take Aways

Slide 4 - Open Burning Defined

“Open Burning” is defined as the burning of any matter, where smoke and other emissions are released directly into the ambient air without passing through an adequate stack or flue.

Typically, open burning involves the burning of brush; but a barrel burn, a grill burning wood, a chiminea, or a campfire are also considered open burning.

The term “adequate stack or flue” is considered to mean where smoke can be reasonably dispersed above ground level.

Slide 5 - Overview of the Open Burning Laws in Connecticut

Laws dealing with open burning can be found in Connecticut General Statutes, Sections 22a-174(f), 23-48, and 23-49a, inclusive.

Under Connecticut General Statutes Section 22a-174(f), this statute explains, under State law, certain situations where open burning is authorized. Although local law can further restrict the ability of open burning within a municipality, and even provide a complete ban on open burning of brush, the specific situations listed within Section 22a-174(f) are the only times an open burn may be authorized.

Under Connecticut General Statutes Section 23-48, it is a misdemeanor offense to conduct open burning without express authorization under State or local law. This enables law enforcement to make arrests when

illegal open burns are conducted. Any person violating this statute is subject to fines of not more than two hundred dollars or imprisonment not more than six months or both. Fines collected are paid to the State.

Under Connecticut General Statutes Section 23-49a, this statute provides additional limitations on when open burning may be authorized. It expressly prohibits open burning when the forest fire danger is declared to be high to extreme or when a drought emergency has been declared by the State Forest Fire Warden. This law must be complied with even if the open burning is otherwise authorized under State and local law. Any failure to follow this law is a misdemeanor offense punishable by fine and/or imprisonment. Fines collected are paid to the State.

A number of municipalities have enacted local ordinances which further regulate open burning within their respective municipal boundaries. Where ordinances have been enacted, tickets or citations can be issued; this type of action falls under an infraction. Fines collected are paid to the municipality.

Slide 6 - State and Municipal Responsibilities related to Open Burning

We will now explain the different authority the State and local municipalities have under the open burning laws of the State. First, we will discuss and provide an overview of the responsibilities the State has with regards to open burning.

Pursuant to Connecticut General Statutes Section 22a-174(f), the Commissioner of the Department of Energy and Environmental Protection, also referred to in this module as the “State Agency”, is responsible for the following:

- Allowing the open burning of brush on residential property;
- Approving or disapproving any proposed permitting of burning brush at a municipal landfill, municipal transfer station or municipal recycling center;
- Approving or disapproving any proposed open burning on state –owned properties for certain activities;
- Certifying the nomination of any local Open Burning Official;
- Enforcing State open burning laws; and
- May adopt regulations, in accordance with the provisions of Connecticut General Statutes Chapter 54, governing open burning and may authorize or prohibit open burning consistent with this section.

Slide 7 - State and Municipal Responsibilities

Next, we will look at the responsibilities of municipalities, and their authority under the law.

Municipal responsibilities are outlined in Connecticut General Statutes Section 22a-174(f).

Except for actions on state-owned property, municipalities have the authority to regulate or ban the open burning of brush within their municipal boundary for any purpose.

Where open burning is allowed by State and local law, the municipality’s Chief Executive Officer must nominate an individual to serve in the capacity of an Open Burning Official. The State Agency must certify the nominated Open Burning Official.

The Local Open Burning Official administers the open burning program for the municipality and has the responsibility for making determinations with regard to submitted permit applications to conduct open

burning for certain activities as allowed for in State statute. Authorized means where a permit can be issued or where certain types of burns are not prohibited, such as campfires and bonfires

In addition to a local Open Burning Ordinance, municipalities are encouraged to have an Open Burning Response Strategy to efficiently and effectively manage violations of State and local open burning laws.

Slide 8 - Municipal Local Open Burning Ordinance

Some Connecticut municipalities currently have enacted local open burning ordinances.

Open burning ordinances provide a clear structure in the handling of open burning violations and ensure a more efficient enforcement process

These ordinances also provide adequate notice to residents encouraging their orderly compliance.

Local open burning ordinances may restrict authorized open burning, but may be no less restrictive than state statutes and regulations governing open burning.

Open burning ordinances may include, but are not limited to, the following provisions:

- A process for obtaining open burning permits from the local open burning official;
- Impermissible uses of open burning permits;
- Situations resulting in an unauthorized open burning;
- Procedures for response to open burning violations and nuisance complaints;
- Requirements and precautions to be taken when burning in accordance to a permit or permit exception;
- Situations, such as campfires, are exempted from needing a permit; and
- Penalties and fines assessed for violating the local open burning ordinance.

Slide 9 - When may Open Burning be Authorized?

Section 22a-174(f) of the Connecticut General Statutes authorizes certain types of open burning when a permit is obtained from the local Open Burning Official.

Only the local Open Burning Official with jurisdiction over the area where the burning will occur can issue open burning permits for the following activities proposed on non-state-owned properties:

- the burning of brush on residential property conducted by the resident of the property or the agent of the resident;
- fire training exercises;
- eradication or control of insect infestations or disease;
- agricultural purposes;
- the clearing of vegetative debris following a natural disaster; and
- vegetative management or enhancement of wildlife habitat or ecological sustainability on municipal property or any privately owned property permanently dedicated as open space.

Slide 10 - When may Open Burning be Authorized (Cont)

Section 22a-174(f) of the Connecticut General Statutes authorizes the following types of open burning when the permit is obtained from the State of Connecticut Department of Energy and Environmental Protection:

- Open burning of brush in municipal landfills, municipal transfer stations or municipal recycling centers may be authorized when a permit has been granted by the Commissioner of the Department of Energy and Environmental Protection to the fire marshal of the municipality in which the burn is to occur. These types of permits may not be issued to a municipality more than six times per year.
- Open burning for the following purposes on state-owned properties:
 - Fire Training Exercises;
 - Eradication or control of insect infestations or disease;
 - Agricultural purposes;
 - Clearing of vegetative debris following a natural disaster; and
 - Vegetative management or enhancement of wildlife habitat or ecological sustainability.

Slide 11 - When may Open Burning be Authorized (Cont)

In addition to open burning authorized with a permit from the State or the local Open Burning Official per Connecticut General Statutes Section 22a-174(f), certain other open burning activities may be conducted within a municipality. These activities include campfires and bonfires, and fire breaks. With regard to campfires and bonfires, local ordinances can place greater restrictions on these types of burning.

Per Connecticut General Statutes Section 22a-174(f), the burning of non-processed wood for campfires and bonfires is not prohibited if the burning is conducted so as not to create a nuisance and in accordance with any restrictions imposed on such burning by the municipality.

Non-processed wood is considered to be any untreated, natural wood up to and including rough cut lumber.

Processed wood is considered to be any wood that has been milled and/or planed and includes recycled wood, and/or glued wood, and/or treated wood, pallets, crates and/or wood scraps from these types of materials.

Campfires and bonfires are not defined by statute. Therefore, local Open Burning Officials should develop their own guidance in this area, preferably by town ordinance. Municipalities may impose further restrictions for these types of open burning, and these restrictions can be found in municipal Open Burning Ordinances. Examples found in local Open Burning Ordinances include: limiting the size of such fires; requiring that all such fires have the written permission of the property owner prior to ignition; setback distances from structures and/or property lines; lot size; and requiring campfires and/or bonfires to be permitted.

At the State level, the Open Burning Program considers both campfires and bonfires as recreational burning. The State Agency's Open Burning Program considers recreational burning to mean an attended fire for recreational purposes, cooking, heat, and camaraderie or for ceremonial use, with some type of containment to prevent the fire from spreading.

Fire breaks do not require open burning permits. Fire breaks for the purpose of controlling forest fires and controlled fires in salt water marshes to forestall uncontrolled fires are not prohibited and do not require a permit.

Slide 12- When is Open Burning Not Authorized?

Now, there are certain situations when open burning is prohibited even if a valid permit is obtained. Connecticut General Statutes Sections 22a-174(f) and 23-49a identify certain situations when no open burning can occur. Under Connecticut General Statutes Section 22a-174(f), no open burning can occur under the following situations:

- **When national or state ambient air quality standards may be exceeded.** In this case, the State's *Predicted Daily Air Quality Index (AQI) Maximums* is used as the basis to determine if open burning can occur. Open burning is prohibited statewide when the AQI is *predicted* to be *75 or higher anywhere in the State*.
- **Where a hazardous health condition might be created.** In this case, hazardous health conditions could potentially be created for citizens who may be at risk for increased health impacts if an open burning permit is issued.
- **When the forest fire danger in the area is identified by the commissioner as extreme.** In this case, no open burning can occur if the forest fire danger is extreme. However, in Connecticut General Statutes Section 23-49a open burning is not allowed if the forest fire danger level is high, very high or extreme. To address this inconsistency, the State Agency's Open Burning Program has determined that the more stringent prohibition of open burning shall prevail, that is - No open burning can occur if the forest fire danger level is high, very or extreme.
- **Where there is an advisory from the commissioner of any air pollution episode.** In this case, air pollution episodes are emergency periods when the State Agency expects air pollution levels to exceed the ambient air quality standards by a large amount, creating a potential for increased health impacts.
- **Where prohibited by an ordinance of the municipality.** In this case, local ordinances can place greater restrictions than found in Connecticut General Statutes Section 22a-174(f); and finally
- **In the case of a municipal landfill, when such landfill is within an area designated as a hot spot on the open burning map prepared by the commissioner.** In this case, the open burning map is no longer in use by the State Agency, so this situation no longer applies.

Under Connecticut General Statutes Section 23-49a, no open burning is allowed within one hundred feet of woodland, brushland, or areas containing dried grass that is adjacent to any woodland or brushland, when the forest fire danger is high or extreme or during a drought emergency as declared by the State Forest Fire Warden.

Slide 13 - When is Open Burning Not Authorized? "Nuisance" or "Public Health Nuisance"

Whether an open burning takes place pursuant to an open burning permit or an open burning activity that does not require a permit, such as a campfire, any open burning will become unauthorized if the burning creates a "nuisance" or "public health nuisance".

It is important to note that the majority of open burn complaints are nuisance-related and are most often the result of smoke impacting neighbors.

A "Nuisance" is the unreasonable, unwarranted, or unlawful use of one's property in a manner that substantially interferes with the use or enjoyment of another individual's real property, without an actual trespass or physical invasion to the land. An example of this would be if smoke from open burning impacts a neighboring house.

When an otherwise authorized open burn rises to the level of a nuisance, a person is exceeding the scope of their authorization to burn per their permit conditions. Permit conditions have been written to avoid nuisance conditions from being created. Specifically, permit conditions such as wind speed and the time of day when a burn can begin and end allow smoke to adequately disperse from the ground level up; thereby avoiding a nuisance issue. In the event conditions change or for some unforeseen reason the burn is impacting nearby residents, burning must cease if so directed by any member of the Town Fire Marshal's Office, any Officer of the Fire Department, any designated municipal official responsible for enforcing the open burning laws and ordinances or any Official of the State of Connecticut's Department of Energy and Environmental Protection.

In most cases when the fire does not pose significant harm and/or would not result in damage to property, the most effective enforcement response is to direct that the fire be extinguished. In those cases where this approach would not be appropriate, local officials are permitted to step in and enforce the violation under an applicable local ordinance or under sections 23-48 and/or 23-49a of the Connecticut General Statutes if no such local ordinance exists.

Where local Open Burning Ordinances have been adopted, sections concerning enforcement, penalties and appeal procedures have been included. The local Ordinances identify those who are responsible for enforcement matters. The local Ordinances lay out penalties and fines for offenses which can include written warnings to increasing fine amounts with continued violations. Violation of a local Ordinance is an infraction. In addition, some local Ordinances allow the local Open Burning Official to seek enforcement of the provisions of the ordinance by an injunction. In such event, the violator may pay as damages, reasonable attorneys' fees in prosecuting such action. Some local Open Burning Ordinances also include language that may cause the forfeiture of the individual's ability to qualify for a permit in the future if violations were found to be the case.

Slide 14 - When is Open Burning Not Authorized? "Nuisance" or "Public Health Nuisance" (Cont)

The term Public Health Nuisance is used by local Health Officials to determine violations of the Public Health Code found in 19-13-B2. Under this Public Health Code, any director of health, upon information of the existence of a nuisance or any pollution occurring within his jurisdiction, or when any such nuisance or pollution comes to his attention, shall, within a reasonable time, investigate and, upon finding such nuisance or pollution exists, shall issue his order in writing for the abatement of the same. Such order shall specify the nature of such nuisance or pollution and shall designate the time within which such abatement or discontinuance shall be accomplished; and if such order is not complied with within the time specified, the facts shall be submitted to the prosecuting authority. Copies of all orders shall be kept on file by the director of health in his office and copies of the same shall be furnished to the State Commissioner of Health on request.

Under the General Statutes of the State of Connecticut, Title 19a Public Health and Wellbeing, Chapter 368e Municipal Health Authorities, Connecticut State Statutes Section 19a-206 covers the following: duties of municipal directors of health, nuisances, injunctions, and civil penalties. This statute requires nuisances to be abated and allows any local director of health or his authorized agent to enter all places within his jurisdiction where there is just cause to suspect any nuisance and abate or remediate or cause to be abated or remediated such nuisance.

Open burning may rise to the level of a "Public Health Nuisance" if it creates a nuisance which has such intensity, characteristics, frequency and duration that:

- It is, or can reasonably be expected to be, injurious to the public health or welfare; or
- It unreasonably interferes with the use and enjoyment of life or the use of property, considering the character and degree of injury to, or interference with, the health, general welfare, property, or use of property of the people affected, and the location of the pollution source and character of the area or neighborhood affected.

When an otherwise authorized open burn rises to the level of a public health nuisance, a person is exceeding the scope of their authorization to burn.

Slide 15 - When is Open Burning Not Authorized? “Nuisance” or “Public Health Nuisance” (Cont)

In most cases it is not up to the local Open Burning Official to determine a public health nuisance. Rather if a local Open Burning Official sees a situation where it appears to rise to the level of a public health nuisance, then they can refer such cases to the local Health Department for additional enforcement.

Situations that may indicate a public health follow-up by a local Health Director includes situations where neighbors are complaining of adverse health effects in addition to simple odor complaints or simple nuisance and where large volumes of smoke may become injurious to public health as estimated by the local Open Burning Official.

When local officials are made aware of a “Public Health Nuisance,” the matter should be promptly referred to local Health Directors for additional enforcement under their authority in 19-13-B2. This enforcement should not take the place of violations for enforcement taken by locally designated officials responsible to enforce open burning under Connecticut General Statutes Sections 23-48 and/or 23-49a.

For more details as to how a local Health Department determines a public health nuisance, State and local health, environmental and enforcement officials have prepared a guidance document entitled “Response to wood burning complaints in Connecticut” which can be found on the State of Connecticut’s Department of Public Health’s website.

Additionally, those locally designated officials responsible to enforce open burning are permitted to step in and enforce the violation under an applicable local ordinance or under CGS Sections 23-48 and/or 23-49a if no such ordinance exists.

Slide 16 - When is Open Burning Not Authorized? [Cont]

Connecticut General Statutes Section 23-49a provides language where burning is not authorized and when the Forest Fire Danger is declared to be high to extreme or when a drought emergency has been declared by the State Forest Fire Warden. However, this Section also provides for a special burning permit that may be given under these conditions. An abstract of the Connecticut General Statutes Section 23-49a subsections (a) and (b) follows:

- Subsection (a) prohibits open burning within one hundred feet of woodland, brushland, or area containing dried grass that is adjacent to any woodland or brushland, when the forest fire danger, as declared by the State Forest Fire Warden, is high or extreme, or during a drought emergency as declared by the State Forest Fire Warden. The State of Connecticut’s Department of Energy and Environmental Protection has taken a more conservative approach where open burning is not allowed when the Forest Fire Danger is high, very high or extreme regardless of the distance to woodlands and grass lands. This condition is found in each of the model application/permit template forms that have been developed by the State Agency.
- Subsection (b) allows the owner of land or an agent of such owner to apply to the State Forest Fire Warden or designee of said warden for a special burning permit during such period of a burning ban provided that there is adequate showing of necessity to conduct such a burn during these dangerous conditions.

The State of Connecticut’s Department of Energy and Environmental Protection’s Forestry Division has a process in place with regard to subsection (b) of 23-49a where a special burning permit may be granted provided that the owner of land or the owner’s agent submits a prescribed burn plan to the State’s Forest Fire

Warden showing immediate necessity. Some prescribed burns can only meet their objectives if they are conducted when the Forest Fire Danger Level is declared to be high to extreme. The Prescribed Burn Plan should describe the conditions under which a prescribed fire can be conducted. A Special Burning Permit allows a permittee to burn during periods of high fire danger as long as three criteria are met: (1) the proposed burn is of immediate necessity; (2) the burn will not be in conflict with federal, state or local regulatory authority; and (3) the permittee has the necessary equipment and manpower to confine the fire. The Special Burn Permit is most often used for the purpose of vegetative management or enhancement of wildlife habitat or ecological sustainability on municipal property or any privately owned property permanently dedicated as open space. In this type of burn, the burn has to be hot enough to achieve effective habitat improvements.

One of the terms of the State's Special Burn Permit is that it obligates the permittee to follow all applicable federal, state and local laws. The applicant must obtain a local Open Burning Permit to validate the State's Special Burn Permit. With the exception of the Forest Fire danger level, all other conditions of the local open burning permit apply.

Slide 17 - Enforcement of Open Burning Laws

Enforcement of open burning laws takes place at both the local and State levels.

At the local level, municipalities can enforce under both State statutes and local ordinances.

Under State Statutes, the enforcement of open burning violations is found in Sections 23-48 and 23-49a.

Responsibilities of local Open Burning Officials can be found in Section 22a-174(f) of the Connecticut General Statutes.

Ordinances are local laws enumerating the limits of authorized open burning within a municipality, and may include penalties for violation.

Municipalities should have in place enforcement response procedures. Municipal Enforcement Response Procedures make the enforcement process more efficient and effective within a municipality. These may be written procedures clearly detailing the proper steps to be taken to enforce open burning requirements, as well as identifying those responsible for enforcing the State laws and local ordinances concerning open burning.

At the State level, the State of Connecticut enforces open burning laws through the Department of Energy and Environmental Protection Open Burning Program. Sections 23-48 and 23-49a of the Connecticut General Statutes provide the basis for the State's enforcement of open burning violations. Responsibilities of the Commissioner can be found in Section 22a-174(f) of the Connecticut General Statutes and the Commissioner's General Authorities as found in Chapter 439 of the Connecticut General Statutes. The Agency's enforcement response procedures can begin with an issuance of a Notice of Violation and depending upon the violation, proceed with administrative orders, or in egregious situations, refer matters to the Offices of the Connecticut Attorney General or Chief State's Attorney.

Slide 18 - Municipal Enforcement

We will first discuss enforcement of open burning laws by the municipalities.

Municipalities get enforcement authority through Sections 23-48 and 23-49a of the Connecticut General Statutes, AND/OR their local ordinances and authorities. Authorities can include, but are not limited to, the Fire Marshal, Fire Department Official, Open Burning Officials, Police Officer, Peace Officer, or local Health Official.

Per Connecticut General Statutes Section 22a-174(f), a municipality can attach more stringent permit conditions to regulate open burning within its jurisdiction.

Local ordinances and permit programs are used by municipalities to manage open burning within their boundaries.

Municipalities should have an Enforcement Policy to assure that consistent procedures are applied in the administration of enforcement matters and actions. The Policy should be made known to those involved in the enforcement process, which could include depending on the municipality, some or all of the following: the Police Department, Peace Officer, Fire Department, Fire Marshal, local Health Director, and the Open Burning Official. The Policy should also be made known to the applicant and to the general public.

Municipalities must determine the appropriate response based upon their municipal structure and available staff. A large number of open burning complaints occur after normal business hours. The local officials respond to complaints and violations of the law. The municipality must communicate to their residents the proper procedures and contact information should open burning become problematic.

Municipalities which utilize their own ordinances may cite an offender pursuant to the local ordinances prior to utilizing Connecticut General Statutes Sections 23-48 and/or 23-49a.

Violations of Connecticut General Statutes Sections 23-48 and/or 23-49a are misdemeanors and violators may be subject to fines and imprisonment. Violators are subject to arrest, processing and the assignment of a court date.

Slide 19 - Municipal Enforcement (Cont)

Now we will cover who the municipalities may designate to enforce violations of open burning laws.

Municipalities have the discretion to choose the municipal officer or employee best able to fulfill the enforcement roles and responsibilities pursuant to State laws and local ordinances. Resources within the municipality may dictate who may be designated to enforce/investigate open burning requirements. In general, open burning complaints are most often referred to the local Open Burning Official or the local Fire Marshal.

In some municipalities, the designated official, or officials, that are responsible for enforcing and ensuring compliance of the open burning laws and ordinances could be the following:

- Fire Marshal
- Fire Department Official
- Open Burning Official
- Police Officer
- Peace Officer
- Local Health Official

Slide 20 - Municipal Enforcement (Cont)

At the local level, municipalities are strongly encouraged to adopt an Enforcement Response Strategy in order to effectively enforce the open burning laws of both the state and the municipality.

Most often violations are determined during the actual burn and often occur outside of normal business hours. Town responders should be knowledgeable in the response structure of their municipality to ensure an appropriate and timely response by the designated official. The designated official must understand the regulatory requirements and be trained to be knowledgeable in carrying out this function.

Local municipalities are strongly encouraged to have a clear strategy to respond to unauthorized open burns and related nuisance complaints.

Local response strategies could include, but are not limited to, the following:

- Clearly enumerated procedures for adequately responding to open burning complaints;
- The appropriate person to contact in the event of receiving an open burning complaint;
- Proper designees to receive and respond to complaints received after hours, on weekends, or on holidays;
- Designated enforcement officials trained and knowledgeable in enforcing and ensuring compliance of open burning laws and ordinances;
- In those cases where the fire does not pose significant harm and/or would not result in damage to property, direct that the fire be extinguished and direct the individual not to repeat the violation; and
- Local Open Burning Ordinances assessing penalties and fines for unauthorized open burning.

Slide 21 - Municipal Enforcement (Cont)

Violations may be a result of, but not be limited to, the following:

- Failure to obtain a permit.
- Failure to obey conditions of the permit.
- The burning of unauthorized material.
- Improperly issued permit.
- A complaint in regards to open burning.
- Failure to obtain a valid permit for any activity expressly requiring a valid permit.
- Open burning on state property without valid written approval from the Commissioner of the Department of Energy and Environmental Protection.

In the event of an alleged violation, appropriate responses could include, but not be limited to, the following:

- A designated enforcement official should respond to a complaint.
- Where municipalities have enacted local Open Burning Ordinances, municipalities have more options in addressing the violation.
- In addition to local ordinances, local police or peace officers have the authority to enforce Sections 23-48 and/or 23-49a of the Connecticut General Statutes.

Slide 22 - Enforcement Visuals

Shown here are two examples where the State's open burning laws were violated.

In the photo showing the burn pile for the purpose of conducting an open burn for an agricultural purpose, unauthorized material such as construction and demolition and oversized bulky waste items make up the composition of the pile.

In the photo showing boards that were taken from the collapsed shed being burned, this activity was an illegal burn. It was not permitted nor could this type activity ever be permitted. Processed wood, painted materials or demolition materials cannot be burned.

Slide 23 - Enforcement: "Peace Officer" and "Offense" Defined

The following are some important definitions when it comes to enforcement. Local police or peace officers have the authority to enforce Connecticut General Statutes Sections 23-48 and 23-49a. The term "Peace Officer" is defined in Connecticut General Statutes Section 53a-3(9).

In Section 53a-3(9) "Peace Officer" means a member of the Division of State Police within the Department of Public Safety or an organized local police department, a chief inspector or inspector in the Division of Criminal Justice, a state marshal while exercising authority granted under any provision of the general statutes, a judicial marshal in the performance of the duties of a judicial marshal, a conservation officer or special conservation officer, as defined in section 26-5, a constable who performs criminal law enforcement duties, a special policeman appointed under section 29-18, 29-18a or 29-19, an adult probation officer, an official of the Department of Correction authorized by the Commissioner of Correction to make arrests in correctional institution or facility, any investigator in the investigations unit of the office of the State Treasurer or any special agent of the federal government authorized to enforce the provisions of Title 21 of the United States code.

Slide 24 - Enforcement: "Offense" Defined

Sections 23-48 and 23-49a are misdemeanor offenses subject to fines and/or imprisonment. This requires an arrest, processing and the assignment of a court date. Because such burning has a fine or imprisonment, it is an "offense".

"Offense" is defined in Connecticut General Statutes Section 53a-24. The term "offense" means any crime or violation which constitutes a breach of any law of this state or any other state, federal law or local law or ordinance of a political subdivision of this state, for which a sentence to a term of imprisonment or fine, or both, may be imposed, except one that defines a motor vehicle violation or is deemed to be an infraction. The term "crime" comprises felonies and misdemeanors. Every offense, which is not a "crime", is a violation. Conviction of a violation shall not give rise to any disability or legal disadvantage based on conviction of a criminal offense.

Slide 25 - Enforcement: "Arrest without Warrant"

Any "Offense" subjects the person to arrest without warrant by a "Peace Officer" in that Peace Officer's "jurisdiction".

Connecticut General Statutes Section 54-1f covers "arrest without warrant" and "pursuit outside precincts". This Section states the following: (a) For the purposes of this section, the respective precinct or jurisdiction of a deputy sheriff or special deputy sheriff shall be wherever he is required to perform his duties. Peace officers, as defined in subdivision (9) of section 53a-3, in their respective precincts, shall arrest, without previous complaint and warrant, any person for any offense in their jurisdiction, when the person is taken and apprehended in the act or on the speedy information of others, provided that no constable elected pursuant to the provisions of section 9-200 shall be considered a peace officer for the purposes of this subdivision, unless the town in which such constable holds office provides, by ordinance, that constables shall be considered peace officers for the purpose of this subsection.

Slide 26 - Enforcement: Penalties

Penalties that may be imposed for any person violating the open burning statutes of the state or local municipality can be assessed per State statutes, local ordinances, and in some cases, the courts.

Under Connecticut General Statutes Section 23-48, the law states the following: Any person who kindles or directs another to kindle a fire in the open air, without proper authorization from state or local authorities or any person who burns materials that are prohibited from being burned by any provision of the general statutes, regulation of the state or local ordinance, shall be fined not more than two hundred dollars or imprisoned not more than six months or both. Under this Statute, Peace Officers can arrest/fine violators.

Under Connecticut General Statutes Section 23-49a, the law states the following: Open burning is prohibited within one hundred feet of woodland, brushland, or area containing dried grass that is adjacent to any woodland or brushland, when the forest fire danger, as declared by the State Forest Fire Warden, is high to extreme, or during a drought emergency as declared by the State Forest Fire Warden. Violations of this provision may result in a fine of not more than two hundred dollars or imprisoned not more than six months or both. Under this Statute, Peace Officers can arrest/fine violators.

For those municipalities that have enacted local Open Burning Ordinances, penalties and fines can be assessed at the local level. First offenses may range from a written notification to monetary penalties. These penalties can be assessed by any local law enforcement or peace officer within the jurisdiction.

For those rare occasions that the State Agency would become involved at a local level, the enforcement protocol can include the following: Issuance of a Notice of Violation from the State Agency and 30 day period to respond; a Unilateral Order or Consent Order with penalties; and a Referral to the Attorney General's Office or Chief State's Attorney.

Slide 27 - Enforcement: Difficulties

The local Open Burning Official is entrusted with certain responsibilities that are expected to be duly carried out. Local Open Burning Officials should carry out their duties pursuant to state and local laws and in consideration of local enforcement policies.

Even when a local Open Burning Official carries out their duty to the best of their ability, problems may arise.

If, in carrying out those duties, the local Open Burning Official is unable to compel local law enforcement or peace officers to take meaningful action pursuant to applicable state or local open burning laws, and attempts by the local Open Burning Official to personally rectify violations that have been ignored or met with excessive resistance from violators, the local Open Burning Official should contact the Department of Energy and Environmental Protection's Open Burning Enforcement Division for further assistance in enforcing the open burning violations.

The Open Burning Enforcement Division can be reached at 860-424-3702, and should be contacted if circumstances arise that prevent the local Open Burning Official from carrying out their duties.

Upon receiving a complaint from a local Open Burning Official, the State Agency may take action it deems reasonably necessary to resolve the issue.

Slide 28- State Enforcement

At the State level, the Department of Energy and Environmental Protection uses a broad range of regulatory, permitting, assistance and enforcement tools to maximize protection of public health and the environment. These tools are used to maintain a strong, credible enforcement presence and to minimize potential impacts that regulated activities can have on the environment. The enforcement and/or compliance tools the State Agency employs include inspections, data tracking and monitoring, compliance assistance, and administrative enforcement.

The State Agency retains the authority to enforce open burning violations, and may step in to enforce the laws of the State when it is deemed necessary. Examples of where the State may decide to take an enforcement action can include, but is not limited to, the following scenarios:

- Against a municipal permittee exceeding the permissible scope of their permit.
- Against a municipality if burning without a permit.
- Against illegal open burns on **state property**. Only the Commissioner of the Department of Energy and Environmental Protection can issue a permit for open burning on state-owned property.
- Against a responsible party who conducted an egregious violation of the open burning law or when a municipality requests and shows cause for assistance in enforcing open burning laws.
- If a local Open Burning Official neglects their duties or acts beyond the scope of their authority, the State Agency may issue a Notice of Violation to the municipality. Any failure to comply with the Notice of Violation may result in further legal action.

Slide 29 - State Enforcement (Cont)

In the event of an alleged violation, the Commissioner of the Department of Energy and Environmental Protection has the authority, under Chapter 446c of the Connecticut General Statutes, to take any of the following actions:

- The State Agency may respond to a complaint as a result of a municipal burn. Staff may then inspect the site and surrounding area to investigate the complaint. The State Agency will speak with appropriate municipal officials to determine if a violation did occur.
- If a violation did occur, the following enforcement actions could be considered:
 - Issuance of a Notice of Violation and 30 day period to respond;
 - Issuance of Administrative Orders, which includes either a Unilateral Order or a Consent Order with penalties;
 - Referral to the Attorney General's Office or Chief State's Attorney;
 - Arrest/fine under Connecticut General Statutes Sections 23-48 and/or 23-49a.

Slide 30 – Examples of the State Agency's Enforcement Response: Violations of Open Burning Statutes

The State's approach to addressing violations of open burning statutes is based on a case by case basis. The State Agency can proceed on an enforcement path based on observations made or otherwise obtained information indicating that a violation of law has occurred. Based upon the observation and/or field investigation and the severity of the violation, the appropriate enforcement action will be determined in accordance with the State Agency's Enforcement Response and Civil Penalty Policies.

For the purposes of this discussion, the person violating the law is referred to as the violator. Enforcement action may also be taken against someone who is not necessarily a "violator" such as a landowner or other person who is legally responsible for correction of a violation or for remediation of an environmental problem. For the purposes of this training, "violators" refers to all possible respondents and defendants.

When determining the appropriate enforcement action, the State Agency may choose either an Informal Enforcement Response or a Formal Enforcement Response. The following are three examples of enforcement approaches that can be taken:

- The first example is where a minor violation has occurred and the violation was promptly corrected. This is an informal enforcement response where a violation occurred but was promptly corrected. An example would be where a resident burns brush on his or her property but fails to obtain a permit from the local Open Burning Official. The designated local enforcement official was able to have the fire extinguished and a promise from the violator not to repeat this type of unauthorized action.
- The second example is where a minor violation has occurred but there was failure to comply by the violator. This starts as an informal enforcement response but moves to a formal enforcement response. An example of this would be where the resident has been informed by a municipal official responsible for regulating the control of open burning for the municipality, not to burn but has done so repeatedly.
- The third example is where the violation is considered to be egregious. This starts as an informal enforcement response but moves to a formal enforcement response. Examples where this level of enforcement may be undertaken include, but are not limited to, blatant disregard for the law, the types of waste that were burned, creating a hazardous health condition, adverse impact to the environment, and failure to obtain a permit.

Slide 31 – Examples of State DEEP Enforcement Path: Violations of Open Burning Statutes: Minor Violation/Violation Corrected

For a minor violation and where the violation can be corrected in a timely manner, the State Agency will use an enforcement approach to quickly acquire assurance that the violation will not reoccur.

The process begins by the State Agency issuing a Notice of Violation to the violator. It puts the violator on notice that a violation occurred and that corrective action is to be taken in response to the Notice of Violation. The violator must submit in writing the details of the corrective action and/or actions. The submittal must be made to the State Agency within thirty days on a State Agency form entitled “Compliance Statement”. If the violator provides to the State Agency their Compliance Statement within the specified timeframe, the State Agency can make the determination if the violation has been corrected. If the violation has been corrected, then the State Agency most likely will make the decision not to pursue formal enforcement action and will notify the violator and close-out the Notice of Violation.

Slide 32 – Example of State DEEP Enforcement Path: Violations of Open Burning Statutes: Minor Violation/Failure to Comply

For a minor violation and where there has been failure to comply on the part of the violator, the State Agency may use another enforcement approach to bring the responsible party back into compliance. The enforcement action starts with the Notice of Violation, an informal enforcement action, and can progress to formal enforcement action that can include some and/or all of the following: issuance of unilateral orders, consent orders, or a referral to the State’s Attorney General’s Office or the Chief State’s Attorney. In a formal enforcement action, the State Agency may seek a penalty in addition to injunctive relief necessary to bring the violator into compliance.

The enforcement process begins by the issuance of a Notice of Violation to the violator.

When the violator fails to submit the written Compliance Statement to the State Agency and/or fails to correct the violation within a timetable that was submitted as part of their Compliance Statement, the State Agency may either issue a Consent Order or a Unilateral Order.

At this point of the process, the violator moves either towards compliance with the order or failure to comply with the order.

If the State Agency has determined that the violator has complied with the order, the State Agency will close out the order and no further enforcement action by the State Agency will be pursued.

If the violator fails to comply with the order, then the matter is referred to the State's Attorney General's Office or the Chief State's Attorney. Referral to the Attorney General causes action to be taken in state court to obtain penalties and/or injunctive relief against a violator.

Referral to the Chief State's Attorney causes an action to bring criminal charges against a violator and is appropriate when the violator's conduct is criminal in nature.

Once the enforcement process moves to the point where the violation has been corrected, either the State Agency will close out the order and/or determine that the judgment has been satisfied.

Slide 33 - Example of State DEEP Enforcement Path: Violations of Open Burning Statutes: Egregious Violation

When a violation occurs that is considered to be especially egregious and where there is failure to come into compliance by the violator, the State Agency may proceed directly to a formal enforcement approach.

In this enforcement example, the enforcement action can move to proposing a Consent Order, issuing a Unilateral Order, or can be directly referred to the Attorney General's Office or the Chief State's Attorney. Again, referral to the Attorney General's Office is to seek an injunction and penalty against the violator and a referral to the Chief State's Attorney involves criminal charges against a violator, and if convicted, the violator faces fines or a prison sentence.

Once the enforcement process moves to the point where the violation has been corrected, the State Agency will close out the order and/or determine that the judgment has been satisfied.

Slide 34 - Take Aways

The following is a quick review of some of the key points of this presentation.

- The local Open Burning Official is tasked with regulating the vast majority of open burning within a municipality's jurisdiction. However, local Open Burning Officials are not specifically tasked with the enforcement of open burning violations.
- The municipality should designate a local official for the enforcement of open burning violations to ensure full compliance with the law. The municipal enforcement designee may include, but is not required to be, the local Open Burning Official.
- In order to ensure compliance with the State and/or local open burning laws, municipalities are strongly encouraged to adopt local ordinances and enforcement response procedures to ensure the laws are properly adhered to and effectively and efficiently enforced.
- Local Open Burning Officials are entrusted with important duties to ensure that state and local open burning laws are properly enforced. Should a local Open Burning Official fail to and/or improperly perform their duties, the State may become involved to assure compliance with relevant State open burning laws.
- The State Agency's Open Burning Program is an important resource to contact should assistance be needed by the local Open Burning Official to resolve difficult enforcement related issues at the local level.

Slides 35 - Take Aways (Cont)

This table provides a synopsis of the terms “nuisance” and “public health nuisance” with regard to the enforcing of the State’s open burning laws.

Slides 36 - DEEP End Page